



Written Testimony of the Connecticut Siting Council

Submitted to the Energy and Technology Committee

**In Reference to Raised Bill No. 566
An Act Concerning Electric Generation Facilities
February 19, 2015**

Good afternoon Senator Doyle, Representative Reed, ranking and distinguished members of the Energy and Technology Committee.

Thank you for the opportunity to provide testimony in connection with Raised Bill No. 566, An Act Concerning Electric Generation Facilities. The Connecticut Siting Council (Council) is the state agency with jurisdiction over the certification of electric generating facilities in the state, which is the subject matter of this bill. Regrettably, the Council has one of its two regular monthly meetings scheduled at the same time as your committee's public hearing; otherwise, we would be able to provide you with oral testimony.

This bill proposes to amend the Public Utility Environmental Standards Act to establish a time period of usefulness and expiration of certificates of environmental compatibility and public need (Certificate) for electric generating facilities. Under Conn. Gen. Stat. §16-50p, "In a certification proceeding, the Council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility, as the Council may deem appropriate." Consistent with that provision, the Council imposes the following standard condition on Certificates issued for electric generating facilities: "Unless otherwise approved by the Council, this Decision and Order shall be void if all construction authorized herein is not completed within four years of the effective date of this Decision and Order or within four years after all appeals to this Decision and Order have been resolved." This standard condition contains a "reasonable and foreseeable" time-frame for construction but also allows the Council, by approving otherwise, to manage the schedule with some flexibility.

The need for flexibility has been upheld by the Connecticut Superior Court. In the 2007 case of *Town of Middlebury v. Connecticut Siting Council*, a party to the 1999 certification of an electric generating facility contended that the Council had no authority to extend its standard four-year construction completion date for the certificated facility without formally amending or modifying the Certificate. The Court held that "there is nothing in the statutes that provides for amendments due to the need to extend the deadline to complete the project nor is there anything that negates the ability of the Council to make a flexible deadline a condition of a Certificate... rather than a matter for amendment." The Court further held that a condition of a flexible deadline fits well within the parameters of the type of a condition that the Council "may deem appropriate" to place on a Certificate, and noted that while discretionary extensions of deadlines

may disrupt energy planning they are often necessary for addressing factors outside of the Council or Certificate Holder's control.

Certainly, time expended on court appeals and litigation of a Council decision to certificate an electric generating facility should not be counted in any time period of expiration for a Certificate, as the courts may order a stay of construction pending resolution of the appeal during which time the Certificate Holder is legally barred from proceeding with construction. This factor is already acknowledged in our standard condition.

Some other examples of factors delaying construction beyond the Council or Certificate Holder's control are energy market forces, technological changes, acquisition of environmental permits from other federal and state regulatory agencies with concurrent jurisdiction, such as the United States Army Corps of Engineers, or seasonal restrictions on construction imposed by the Council and other federal and state regulatory agencies with concurrent jurisdiction. All of these examples support the need for flexibility to evaluate and extend deadlines for construction of an electric generating facility.

In summary, the Council supports the intent of Raised Bill No. 566, noting that we currently implement that intent with our standard four-year condition on construction. At the same time, the Council believes that any legislation requiring a deadline must also include a mechanism for flexibility to evaluate and extend deadlines that is consistent with the 2007 court decision in *Town of Middlebury v. Connecticut Siting Council*. Also, as with most matters of regulation, it would be advisable in terms of general and necessary discretion about the future.

Thank you again for the opportunity to provide testimony on this proposal. Should you have any questions or seek additional information, please feel free to contact me at 860-827-2951 or Melanie.bachman@ct.gov.

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